

LINCOLN SQUARE LEGAL SERVICES, INC.

Fordham University School of Law  
150 West 62nd Street, Ninth Floor  
New York, NY 10023Tel 212-636-6934  
Fax 212-636-6923**MEMORANDUM ENDORSED**

January 18, 2023

**By ECF**Honorable Gregory H. Woods  
United States District Judge  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, NY 10007USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 1/20/2023**Re: United States v. Marlon Chirinos**  
**21-CR-581 (GHW)**

Your Honor:

We write on behalf of Mr. Marlon Chirinos to request a 60-day adjournment of Mr. Chirinos's sentence, which is currently scheduled for February 8, 2023. The government consents to this request. This is the second adjournment request.

The Second Circuit's recent 3-0 decision in *United States v. Gibson*, No. 20-3049 (2d Cir. Dec. 6, 2022), explains why the state criminal conviction at issue is not an adequate predicate for the Guidelines career offender provision. Yet the final Presentence Report finds that it is an adequate predicate and discounts *Gibson* because the mandate has yet to issue. The government has also indicated concern that the mandate has not yet issued in that case, as well as other grounds for continuing to contend that Mr. Chirinos is subject to the career offender provision—grounds which Mr. Chirinos is prepared to rebut. We also note that the government filed a petition for rehearing of *Gibson* on January 6, 2023, which has delayed the issuance of the *Gibson* mandate.

The stakes are very high for Mr. Chirinos. His guideline range will either be 70-87 or 151-188 months. In addition, while counsel has twice sought the government's agreement to allow a plea agreement with a limited right to appeal on the career offender issue, the government has declined to alter its standard appeal waiver language. As such, Mr. Chirinos stands to be sentenced on February 8 without any recourse if this Court were to find the career offender provision applicable and the *Gibson* mandate were to issue subsequently without any material change to its December holding and reasoning. This would not be a just result. Thus, we request 60 days to allow the rehearing issue to be resolved. Mr. Chirinos is aware of this request, and he hopes the Court will grant it, given his predicament.

If the Court were to grant Mr. Chirinos's request, we would request the schedule be adjusted in the following manner, given the holidays, if possible:

- Defendant's Sentencing Submission due on March 29;
- Government's Sentencing Submission due on April 5; and

- Sentencing on April 12 at \_\_\_\_\_.

Thank you for your consideration of this matter.

Respectfully,

/s/

Michael W. Martin

Ian Weinstein

Lincoln Square Legal Services, Inc.

*Attorneys for Mr. Marlon Chirinos*

cc: **By ECF & Email**

Elizabeth Espinosa, Esq.

Assistant United States Attorney

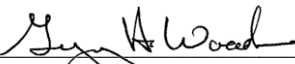
Southern District of New York

Application granted. The sentencing hearing in this matter is adjourned to April 18, 2023 at 11:00 a.m. The defendant's sentencing submissions are due no later than April 4, 2023 ; the Government's sentencing submissions are due no later than April 11, 2023 .

The Clerk of Court is directed to terminate the motion pending at Dkt. No. 72.

SO ORDERED.

Dated: January 20, 2023

  
\_\_\_\_\_  
GREGORY H. WOODS  
United States District Judge